

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

June 27, 2014

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, June 27, 2014.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the May 30, 2014 meeting will be considered at this time.
- III. **PUBLIC HEARING ON ZONING APPEALS**
 - A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair will sound the agenda in regard to any postponements, withdrawals, and items requiring no discussion.
 1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair will announce that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
 2. **No Discussion Items** - The Chair will ask if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.
 - B. **Transcript or Witnesses** - The Chair will announce that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
 - C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2014-48: BILL & AMY COLEMAN** - appeal for variance to reduce the required side yard from 3 feet to 0 feet in order to install a fence in a Planned Neighborhood Residential (R-3) zone, at 1080 Kavanaugh Lane (Council District 6).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties and will not cause a health, safety or welfare issue if designed appropriately to accommodate storm water drainage and emergency access. The applicants propose to have a gate, thereby not creating an obstruction in the side yard of this property, and the fence is only partially located in the side yard of the house. It is in the most logical and least intrusive location as possible to connect the side basement door to the rear yard of this lot. It will not cause an obstruction to the neighboring property owner, nor will it prevent the use of their side or rear yard, especially by emergency responders if absolutely necessary.
- b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance. The requested variance is a logical request due to the unique circumstances of this lot. Conversely, the allowable fence permit that the applicants could pursue outside of the minimum required side yard would be contrary to the intent of the Zoning Ordinance by creating an obstruction in the provided side yard.

- c. The fact that this structure does have an atypical basement door in the side yard, rather than opening to the rear yard, made possible by an unusually steep slope (topography) on this lot, constitutes special circumstances for this lot that do not generally apply to most other homes in this subdivision or in the nearby neighborhood.
- d. Strict application of the Zoning Ordinance would require the fence to be moved entirely to the rear of the home or be so close to the basement door that the door would not function properly. This would cut off the rear yard from the basement door which, is located on the side of the house, constituting an unnecessary hardship to the appellants.
- e. The requested variance is not a willful violation of the Zoning Ordinance. The applicant learned of the need for a variance to build their requested fence as a normal part of the fence permit process, long after permits for site grading and home construction were issued.

This recommendation of approval is made subject to the following conditions:

- 1. The property shall be developed in accordance with submitted site plan and application.
- 2. A fence permit shall be obtained by the applicant from the Division of Building Inspection, noting specifically that Division of Engineering acceptance of a design that does not impede the storm water drainage is required as a condition of this variance.
- 3. A gate shall be installed for the side yard fence.
- 4. Upon completion of the fence construction, the applicants shall document to the Division of Engineering (and copy the Division of Planning) that the fence was constructed per the design approved by the Division of Engineering.
- 5. It is the owners' responsibility to maintain the fence free and clear of debris that would otherwise be detrimental to the flow of water through the drainage easement.

D. Conditional Use Appeals

- 1. **C-2014-10: LEXINGTON FRIENDS MEETING** – a request to amend an existing conditional use permit to allow child care for 80 or fewer children and to add a play area and a handicap accessible entry in a Two Family Residential (R-2) and a Planned Neighborhood Residential (R-3) zone, at 649 – 659 Price Ave. (Council District 1).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as an institutional/church use has occupied this property for approximately 60 years, and the Lexington Friends Meeting has successfully operated at this location since 200. The expansion of the use to allow a day care center during the week is a logical and efficient use of the established facilities, and is common at many churches throughout this community. Furthermore, adequate parking will be available on site, and the church intends to significantly increase the amount of green space behind the church.
- b. All necessary public facilities and services are available and adequate for the proposed expansion.

This recommendation of approval is made subject to the following conditions:

- 1. The property shall be developed in accordance with the approved site plan and application, allowing for slight modifications to the drop-off area and parking lot design during the normal permitting process, subject to the review and approval of the Divisions of Planning, Building Inspection, Traffic Engineering, and Engineering.
 - 2. All applicable permits, including a Building Permit, Zoning Compliance Permit, and Certificate of Occupancy, shall be obtained by the applicant from the Divisions of Building Inspection and Planning.
 - 3. The facility shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.
 - 4. The applicant shall maintain and/or replace the parking lot perimeter landscaping and buffering, including but not limited to; the vegetative buffers along the street frontages and the fencing where adjoining the neighboring residential properties. Landscaping and buffering shall meet the requirements of Article 18, except where specifically varied by the Board of Adjustment in cases CV-90-129 & CV-94-51.
- 2. **C-2014-21: SOLAR ECLIPSE, LLC** - appeals for a conditional use permit to construct a parking area accessory to an adjacent P-1 zone in a Planned Neighborhood Residential (R-3) zone, at 2101 Palomar Trace Drive (Council District 10).

The Staff Recommends: **Postponement**, for the following reason

- a. Additional information concerning the preliminary grading plans and potential extent of retaining walls is necessary to assess the impact that this proposed conditional use will have on adjoining properties.
3. **C-2014-36: SOUTH ELKHORN CHRISTIAN** - appeals for a conditional use permit to operate a child care facility in conjunction with a church in an Agricultural Urban (A-U) zone, at 4343 Harrodsburg Rd. (Council District 10).

The Staff Recommends Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the proposed child care facility is a logical addition to the church uses on the subject property. The existing play area and parking are adequate to serve this use without requiring any physical change to the property.
- b. All necessary public facilities and services are adequate for the proposed use as no new buildings or parking are required for this use.

This recommendation of approval is made subject to the following conditions:

1. The child care facility shall be operated in accordance with the submitted application and a revised site plan to show the existing outdoor play area, with the hours of operation limited to 8:00 am to 4:00pm, Monday through Friday.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to operation as a licensed child care facility.
3. All pole lighting to be installed in off-street parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward and away from adjoining residential properties.
4. All existing tree lines and fencing along the church / child care facility property boundaries shall be preserved and maintained to the greatest extent possible.
4. **C-2014-38: TINA MOORE** - appeals for a conditional use permit to provide family child care for up to 12 children in a Single Family Residential (R-1D) zone, at 722 Biskoff Court (Council District 1).

The Staff Recommends Approval: for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adequate off-street (and one-street) parking is available for this use, and a large fenced outdoor play area already exists, which exceed the minimum requirement of 300 square feet (25 feet per child).
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Child care shall be provided in accordance with the submitted application and site plan, with care provided from 7:30 am to 6:00 pm, Monday through Friday..
2. All necessary permits, including issuance of a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Division(s) of Planning and Building Inspection prior to beginning child care for more than six (6) children at this location.
3. The facility shall at all times operate in compliance with regulations of the Kentucky Cabinet for Health and Family Services.
4. This conditional use shall become null and void should the applicant no longer reside at this location.
5. **C-2014-40: JANE AND RALPH RANSOM** - appeal for a conditional use permit to provide family child care for up to 12 children in a Planned Neighborhood Residential (R-3) zone, at 3416 Sanibel Drive (Council District 6).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adequate off-street parking is available for the use, and on-street parking is also available. A large fenced outdoor play area will be provided. The increase in the number of children is partially due to the fact that some of the parents are expecting babies, which should help to mitigate any potential increase in traffic.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Child care shall be provided in accordance with the submitted application and site plan, with child care provided 7:00 am to 5:30 pm Monday through Friday.
 2. All necessary permits, including issuance of a Zoning Compliance Permit, a fence permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to beginning to provide child care for up to twelve (12) children at this location.
 3. The facility shall at all times operate in compliance with regulations of the Kentucky Cabinet for Health and Family Services.
 4. This conditional use shall become null and void should the applicant no longer reside at this location.
6. **C-2014-41: FIRST BRACKTOWN, INC. (BRACKTOWN ACADEMY)** – appeals for a conditional use permit to increase the allowable number of children at the child care facility from 199 to 225 in a Single Family Residential (R-1C) zone, at 3016 Bracktown Road (Council District 2).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit to expand the existing child care is enrollment should not adversely affect the subject or surrounding properties. No aspect of this request, if approved, should significantly alter the existing relationship of the subject property and surrounding residential properties.
- b. Adequately designed facilities exist for both the church and the child care operations. Sufficient parking, pedestrian features, landscaping, stormwater management, and infrastructure are all in place.
- c. The requested increase in child care enrollment is 13%, which is a relatively small increase.

This recommendation of approval is made subject to the following conditions:

1. The child care center shall accommodate no more than 225 children enrolled, operating daily Monday through Friday between the hours of 6:00 AM and 7:00 PM.
 2. All necessary permits, including issuance of a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection.
 3. The facility shall at all times operate in compliance with regulations of the Kentucky Cabinet for Health and Family Services.
7. **C-2014-42: VETERAN'S LOUNGE** – appeals for a conditional use permit to open a lounge/bar in a Neighborhood Business (B-1) zone, at 1485 Leestown Road (Council District 2).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as this site is sufficiently buffered by other commercial uses from the nearest residential uses, and parking in front of this cocktail lounge will be available during the proposed hours of its operation.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The cocktail lounge shall be operated in accordance with the submitted application and site plan, recognizing the hours of operation (until 2:00 am), except on Sundays (until 9:00 pm).
 2. Live entertainment and/or dancing may not be provided unless a revised conditional use is approved by the Board of Adjustment.
 3. All necessary permits for renovation shall be obtained by the applicant from the Divisions of Planning and Building Inspection, including but not limited to a Zoning Compliance Permit and Certificate of Occupancy, prior to the operation of the requested bar/lounge.
 4. This conditional use shall operate at all times in accordance with state and local ABC laws and regulations.
8. **C-2014-43: ERIC MOBERLY** – appeals for a conditional use permit for an athletic facility (Martial Arts Instruction), in a Light Industrial (I-1) zone, at 2416 (aka 2420) Palumbo Drive (Council District 7).

The Staff Recommends: Postponement, for the following reasons:

- a. Information regarding the number and scale of competitions has not yet been submitted by the applicant; therefore, the required parking and impact on the subject and surrounding properties can not be fully determined at this time.
- b. The front parking area does not meet the vehicular use area screening requirements of Article 18, and

additional landscaping is warranted (and required to the rear of the property) as a condition of this use. None has been proposed as part of this application.

9. **C-2014-45: L'ESCALADE FITNESS, INC.** – appeals for conditional use permits to: 1) extend the regulations of the B-1 zone up to 50 feet into the R-1C portion of the property, and 2) construct and occupy an indoor recreational facility in a Wholesale and Warehouse Business (B-4) zone, at 916 North Broadway (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as adequate landscape buffers will be maintained; and the building was purposely designed to take advantage of the sunlight, without casting a burdensome shadow on the surrounding residential properties. The applicant will attempt to preserve all of the mature existing perimeter trees, and will be required to upgrade the landscaping per the minimum requirement of the Zoning Ordinance in any area that is lacking. Available parking on site should meet the anticipated need, even during the largest regional competitions.
- b. All necessary public facilities and services are available and adequate for the proposed use of the property.

This recommendation of approval is made subject to the following conditions:

1. The conditional use shall take place in accordance with the submitted application and site plan.
2. All necessary permits, including but not limited to a Zoning Compliance Permit, Building Permit, and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to construction and operation of the new facility.
3. Parking areas and access shall be paved, with spaces delineated, and landscaped/screened as required by Articles 16 and 18 of the Zoning Ordinance.
4. All new pole lighting for off-street parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward and away from all adjoining residential properties, including the adjacent mobile home park.
5. The final layout of the new off-street parking area and access to North Broadway shall be subject to review and approval by the Division of Traffic Engineering.
6. A storm water management plan shall be implemented in accordance with the adopted Engineering manuals, subject to acceptance by the Division of Engineering.
7. All existing tree lines along the adjacent residential, mobile home and church property boundaries shall be preserved and maintained to the greatest extent possible. If necessary, these boundaries will be further landscaped and shall be maintained to meet at least the minimum required landscaping in Article 18-3(a)(1)(3) of the Zoning Ordinance.
8. Use of the property for outdoor events (including but not limited to competitions) shall be limited to a maximum of 6 events per year and no more than 10 off-street parking spaces may be utilized for this purpose.
9. This use shall be subject to a one year review by the Board of Adjustment after the issuance of a Certificate of Occupancy has been obtained. Mailed notice to adjacent property owners shall be made at least 21 days prior to the Board's meeting and shall be the responsibility of the applicant.

10. **C-2014-46: CHAPEL HILL PRESBYTERIAN CHURCH** – appeals for a conditional use permit to establish a school for academic instruction, accessory to the existing church in a Single Family Residential (R-1C) zone, at 3534 Tate's Creek Road (Council Districts 8).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use for a school for academic instruction should not adversely affect the subject or surrounding properties, as a church use has occupied this property for approximately 25 years. The expansion of the use to allow a school during the week is a logical and efficient use of the established facilities, and is common at many churches throughout this community.
- b. All necessary public facilities and services are available and adequate for the proposed school.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the approved site plan and application.
2. All applicable permits, including a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained by the applicant from the Divisions of Building Inspection and Planning, prior to use of the property as a school.
3. Enrollment in this school shall be limited to no more than 50 students.

11. **C-2014-47: TRANSYLVANIA UNIVERSITY** – appeals for a conditional use permit to construct additional parking accessory to the school for academic instruction in a High Density Apartment (R-4) zone, at 424-442 & 425-451 Bourbon Avenue & 457 West Fourth Street (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. These off-street parking areas will enable the University to provide additional parking for their students, thereby decreasing the demand for on-street parking in the surrounding neighborhood(s).
- b. All utilities and other public facilities either adequately exist or will be extended and/or upgraded to serve the requested use for parking lots.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the approved site plan and application, allowing for slight modifications to meet the detailed approvals by the Divisions of Engineering or Traffic Engineering, if necessary, during the normal permitting process. A copy of the approved layout will be submitted to the Division of Planning if there are any changes.
 2. All necessary permits, including any demolition and grading permits must be obtained from the Division of Building Inspection.
 3. A Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Division of Planning and the Division of Building Inspection upon completion of the parking lots and prior to use.
- Lighting shall be designed and constructed such that it is directed away from any surrounding residential uses

E. **Administrative Reviews**

1. **A-2014-44: ROSA PLAGE** – an administrative appeal to change one non-conforming use (upholstery shop) to another (beauty salon) in a High Density Apartment (R-4)/Historic District Overlay (H-1) zone, at 617 West Short Street (Council District 2).

The Staff Recommends: Approval, for the following reasons:

- a. The requested use of a beauty salon will not be an increase in scope, from the previous use, nor should it negatively alter the character of the surrounding properties. A small beauty salon, as proposed, is first allowed in the Professional Office (P-1) zone, which is a less intense zoning category than that required for the previous non-conforming use of an upholstery shop - first allowed in the Wholesale and Warehouse Business (B-4) zone.
- b. The proposed salon will have the same amount of off-street parking as the former use, which is another indication that the proposed use will not result in an increase in the intensity of the use at this site.
- c. All of the changes to the site have been approved by the Board of Architectural Review; and there are no changes that would constitute a structural change to the building that could otherwise be construed as an expansion of the non-conforming use.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted application and site plan, subject to any revisions required by the Board of Architectural Review.
2. All necessary permits, including, but not limited to a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to commencing the proposed use.
3. Any and all exterior work on the subject property shall proceed in a manner that complies with requirements of the Division of Historic Preservation and the Board of Architectural Review.

IV. **BOARD ITEMS** - The Chair will announce that any items a Board member wishes to present will be heard at this time.

V. **STAFF ITEMS** - The Chair will announce that any items a Staff member wishes to present will be heard at this time.

VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be July 25, 2014.

VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.

